

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs May 15, 2007

STATE OF TENNESSEE v. DAVEN DECARLO TURNER

Appeal from the Criminal Court for Rutherford County
No. F-52179 and F-52180 Don R. Ash, Judge

No. M2006-02522-CCA-R3-CD - Filed June 27, 2007

The defendant, Daven Decarlo Turner, pled guilty in the Rutherford County Criminal Court to various charges resulting in a total effective sentence of twelve years as a Range II, multiple offender, suspended to probation upon the service of one year incarceration. Upon his second arrest for violations of his probation, the trial court revoked the defendant's probation and ordered him to serve his full sentence in prison. It is from this revocation that he now appeals, arguing that the trial court violated his due process rights and subjected him to cruel and unusual punishment in revoking his probation. Following our review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3, Appeal as of Right; Judgment of the Criminal Court is Affirmed

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT W. WEDEMEYER, JJ., joined.

R. Wilford Fraley, III, (on appeal); Gerald Melton, District Public Defender; and J.D. Driver, Assistant District Public Defender (at trial), Murfreesboro, Tennessee, for appellant, Daven Decarlo Turner.

Robert E. Cooper, Jr., Attorney General & Reporter; Brent C. Cherry, Assistant Attorney General; William C. Whitesell, Jr., District Attorney General; and Jennings Jones, Assistant District Attorney General, for appellee, State of Tennessee.

OPINION

A review of the technical record reveals that, on May 2, 2002, the defendant pled guilty in case number F-52180 to five counts of theft of property valued at less than five hundred dollars, class A misdemeanors, and one count of aggravated assault, a class C felony. Additionally, in case number F-52179, the defendant pled guilty to a sixth count of theft of property valued at less than five hundred dollars. He received sentences of eleven months and twenty-nine days for the theft convictions and a sentence of seven years as a Range II, multiple offender suspended to probation upon the service of one year for the aggravated assault conviction. Although not part of the record

on appeal, the defendant states in his brief that he also pled guilty in case number F-52180 to one count of felony evading arrest and one count of theft of property valued at over one thousand dollars but less than ten thousand dollars, class D felonies, for which he received Range II sentences of five years each. All sentences were ordered to be served concurrently except for the felony evading arrest conviction which was imposed consecutively for a total effective sentence of twelve years, suspended to probation after the service of one year.

On April 8, 2004, the defendant entered into an agreed order resolving a probation violation and was required to serve an additional year in custody before being released to probation again. As a term of the revocation, the defendant agreed that any future violation would result in the full service of his twelve year sentence in prison. The record reflects that the defendant was released to probation sometime in March 2005. On December 6, 2005, a second probation violation warrant issued alleging that the defendant had violated his probation by failing to report and receiving a new conviction in Davidson County.

The defendant admitted to the violations at the revocation hearing. However, he argued that he attempted to contact his probation officer but was unable to properly report due to neither probation department in Davidson County or Rutherford County having him assigned as a probationer in their jurisdiction. He testified that he attempted to meet with probation officers in both counties but stopped trying to report because neither office had his file. He stated that he “was just giving them a chance to call me because I was doing my part and trying to let them know who I was.” However, he admitted that he had not attempted to report any time after May 2005. Regarding his new conviction for joyriding, he argued that he was driving his girlfriend’s father’s car and that the prosecution arose due to animosity the father felt towards the defendant dating the daughter who is of a different race than the defendant. He also recalled agreeing at the first revocation hearing to serve his sentence should he garner new violations.

On appeal the defendant argues that the trial court erred in revoking his probation and ordering him to serve his full sentence in prison. Additionally, he argues that the agreed revocation order violates his due process rights, that he has already served a substantial amount of time incarcerated on these charges, that the length of the sentence imposed is disproportionate to the convicted offenses and that his right against cruel and unusual punishment has been violated by the imposition of a twelve year sentence for these offenses. He raises all of these issues of error without citing to a single authority and the entire argument covers less than two full pages of his appellate brief. Rule 10(b) of the Rules of the Court of Criminal Appeals provides that “[I]ssues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court.” Despite the insufficient brief, we shall review the propriety of the trial court’s action in revoking the defendant’s probation.

A trial court may revoke a sentence of probation upon finding by a preponderance of the evidence that the defendant has violated the conditions of his release. Tenn. Code Ann. § 40-35-311(e). A trial court is not required to find that a violation of probation occurred beyond a reasonable doubt. Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). The evidence need

only show that the court has exercised conscientious judgment in making the decision and has not acted arbitrarily. Id. Our standard of review on appeal is whether the trial court abused its discretion in finding that a violation of probation occurred. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). In order to conclude that the trial court abused its discretion, there must be no substantial evidence to support the determination of the trial court. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). Such a finding “reflects that the trial court’s logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case.” State v. Shaffer, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting State v. Moore, 6 S.W.3d 235, 242 (Tenn. 1999)).

The defendant admitted to the violations but attempted to mitigate their seriousness before the trial court. Clearly, the defendant violated the conditions of his probation. Furthermore, he had been previously warned at an earlier revocation hearing of the consequences of committing further violations. The “agreement” between the trial court and the defendant was to impress upon the defendant the seriousness of his situation. The trial court afforded the defendant every right and opportunity required by due process. The trial court did not arbitrarily revoke the defendant’s probation based on the “agreement,” as alleged by the defendant. This court cannot conclude that the trial court abused its discretion in revoking his probation and ordering him to serve his twelve year sentence in prison. Therefore, the judgment of the trial court is affirmed.

D. KELLY THOMAS, JR., JUDGE